Conversent Communications

July 7, 2006

Mary L. Cottrell, Secretary
Massachusetts Department of Telecommunications and Energy
One South Station
Boston, MA 02110

Re: *In re Investigation by the Department of Telecommunications and Energy on its own Motion to Establish Retail Billing and Termination Practices for Telecommunications Carriers,* DTE 06-08.

Dear Secretary Cottrell:

The reply comments of Conversent Communications of Massachusetts, Inc. in response to the issues raised by the Order Opening a Notice of Inquiry to Establish Retail Billing and Termination Practices for Telecommunications Carriers, dated April 7, 2006, are enclosed for filing.

Thank you for the opportunity to comment. Please contact me (401-834-3326 direct dial or gkennan@conversent.com) if you have any questions.

Very truly yours,

Gregory M Kennan

Gregory M. Kennan
Director, Regulatory Affairs and Counsel

**COMMONWEALTH OF MASSACHUSETTS**
**DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

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| **Investigation by the Department of Telecommunications and Energy on its own Motion to Establish Retail Billing and Termination Practices for Telecommunications Carriers** | **D.T.E. 06-08** |

# CONVERSENT'S REPLY COMMENTS

Conversent Communications of Massachusetts, Inc. ("Conversent") respectfully replies to certain comments submitted by other parties in this proceeding[1] regarding the issues raised by the Order Opening a Notice of Inquiry to Establish Retail Billing and Termination Practices for Telecommunications Carriers, dated April 7, 2006 ("Opening Order").

In our initial comments, Conversent suggested that the Department should not extend the "Rules and Practices Relating to Telephone Services to Residential Customers" ("Practices") to small business customers. Conversent Comments at 2-3. The other parties' comments underscore and support Conversent's view. Three other parties commented on the issue. They were unanimous in urging the Department not to extend the practices to small business customers.

[1] Based on an examination of the Department's web site, Conversent is aware of comments filed by: The Attorney General; AT&T Communications of New England, Inc. ("AT&T"); Cingular Wireless, Sprint-Nextel, T-Mobile, and Verizon Wireless ("CMRS Providers"); Comcast of Massachusetts, Inc. ("Comcast"); Level 3 Communications, LLC; Miller Isar Inc. on Behalf of Non-Facilities-Based Interexchange Carrier Clients ("Miller Isar"); National Consumer Law Center ("NCLC"); Verizon New England Inc., d/b/a Verizon Massachusetts ("Verizon"); and XO Communications Services, Inc. ("XO").

Conversent also addresses two other specific issues:[2]

- line items on customer bills;
- the request of Millar-Isar for an impossible (or at least, extremely burdensome and impracticable) requirement that local exchange carriers inform customers of their contractual obligations to former providers when the customers change service providers.

## I. Threshold Issue — Extending the Practices to Small Business Customers.

The commenters that addressed the issue unanimously concurred with Conversent that the Department should not extend the Practices to small business customers.

"The Department . . . should decline to extend any form of a Residential Practices to any business customers." XO Comments at 5. "Comcast suggests that to the extent the Department concludes that revised Practices are required *at all* in light of the growing competition in Massachusetts, any new Practices should apply only to residential basic local exchange service." Comcast Comments at 11 (emphasis in original). "[T]he Department . . . should establish broad 'Guiding Principles' to ensure that consumers are informed and adequately protected. . . . Those Principles should not, however, be extended to include . . . business services . . . ." Verizon Comments at 2.

Nothing is broken in the area of billing and collection for small business customers that the Department needs to fix by extending the Practices to such customers. No commenter suggests that small business customers are in need of the protections that the Practices afford residential customers. To the contrary, as Verizon says, "There is no public policy basis for expanding to business customers the protections designed for residential consumers. The

[2] As in our initial comments, Conversent's discussion of these additional matters is contingent, and applies only if the Department were to determine to extend the Practices to business customers. Conversent does not offer residential service and expresses no view as to the application of the Practices to residential service.

Department has never regulated carrier billing and collection practices with respect to business customers and rightfully so." Verizon Comments at 8. As Verizon correctly points out, business customers generally are more sophisticated than residential consumers and are in a better position to negotiate contractual protections if desired. *Id.* at 9; *see* Conversent Comments at 2.

Therefore, the Department should not extend the Practices to small business customers. Not a single commenter suggested extending the practices to business customers.[3] Conversent agrees with Verizon that "Any imposition of billing and collection rules in the business market would be a substantial step backwards . . . ." Verizon Comments at 9.

## II. Line Items on Customer Bills.

Conversent concurs with AT&Ts suggestion "that the Department not . . . entertain adoption of rules governing line items on the bill." AT&T Comments at 4. As both AT&T and Conversent commented, federal law expressly permits non-misleading line items on telecommunication bills. "Any attempt by the Department to curtail the use of line items on bills would be contrary to federal law and thus preempted." AT&T Comments at 5; *see* Conversent Comments at 6-7.

While the Department currently may impose truth-in-billing requirements that are more specific then the FCC's requirements,[4] it is unclear whether it will continue to have such authority in the future. The FCC has tentatively concluded that it should reverse its prior determination that states may enact and enforce more specific state truth-in-billing requirements.

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[3] In addition to Comcast, Conversent, Verizon, and XO, the only other commenter to address the issue at all was NCLC. NCLC expressly took no position on the questions addressing business customers. NCLC Comments at 3 n. 4.

[4] As Conversent explained in our initial comments, such requirements must be consistent with federal law. A prohibition, either general or specific, against line items, which are expressly permitted by FCC regulations, would be inconsistent with federal law and therefore preempted. Conversent Comments at 5-7.

Conversent Comments at 8-9. If the Department were to enact a set of requirements now and soon lose its authority to do so, consumers would be confused and carriers' operations would be unnecessarily disrupted. At a minimum, the Department should defer considering any regulation of line items on customers' bills until after the FCC's decision on this subject.

## III. Requiring Local Exchange Carriers to Advise Customers Regarding Contractual Obligations to Former Carriers.

Conversent is both a local exchange carrier and a reseller of IXC services. We disagree with the comments of Miller Isar filed on behalf of an unspecified number of anonymous IXC resellers.

Miller Isar is unspecific as to exactly what it is recommending that the Department do. As Conversent understands it, Miller Isar wants the Department to require a local exchange carrier to explain to a customer seeking a PIC change the contractual obligations that the customer has to the former provider.

Complying with such a requirement would be impossible. There is no way that the local exchange carrier would know what contracts the customer has with the former provider, or the substance of those contracts. Any advice that the local exchange carrier gives would be speculation.

Even if not impossible, such a requirement would be extremely impracticable and burdensome. It would require the local exchange carrier to obtain the information and store it. Because of competitive concerns, it is doubtful that the former provider would share its contracts with the local exchange carrier. Even if the local exchange carrier could obtain information regarding the contracts of the former provider, it would be a massive job to collect, compile, and catalogue the contracts, and to extract, interpret, and summarize the substance of those contracts.

Also, since providers change their contracts from time to time, there is no guarantee that the contract in the local exchange carrier's possession would be current. To the extent that the provider had different contracts for different classes of customers or individual customers, there could theoretically be as many contracts as there are customers. Therefore, any advice that the local exchange carrier gave probably would be bad.

Miller Isar claims instances where carriers allegedly misrepresented that they would assume responsibility for the customer's contract with the former provider. Miller Isar Comments at 2-3. Such misrepresentation is not to be tolerated, but the Department has the authority to investigate and remedy any such practices under its general authority to ensure that the practices of a telecommunications carrier are just, reasonable, safe, adequate, and proper. G.L. c. 159, § 16. There is, therefore, no need for a requirement that a local exchange carrier advise a business customer regarding its contractual obligations under a contract to which the local exchange carrier is not even a party. As Verizon aptly notes, business customers generally "are informed of the terms of their agreements." Verizon Comments at 9.

Therefore, the Department should impose no requirements that a local exchange carrier advise a business customer regarding contractual obligations to a former provider.

July 7, 2006

Respectfully Submitted,

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